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Judgment of the General Court in Case T-136/19 | Bulgarian Energy Holding and Others v Commission

The General Court annuls the Commission Decision according to which the BEH Group abused its dominant position by refusing access to strategic gas infrastructures in Bulgaria

At the time of the facts, Bulgarian Energy Holding (BEH), a company wholly owned by the Bulgarian State, had several subsidiaries which were active in the energy sector, including Bulgargaz and Bulgartransgaz. Bulgargaz was the public gas supplier in the country. Bulgartransgaz managed and operated the gas transmission network used for the distribution of gas in Bulgaria. It also controlled the only natural gas storage facility in the country, situated underground in Chiren.

For a long time, Bulgaria's supply depended almost entirely on imports of Russian gas. That gas was transported via Ukraine, then Romania, mainly through the Romanian Transit Pipeline 1, which was managed by the company Transgaz, the gas transmission network operator in Romania.

From 1974, an intergovernmental agreement between Bulgaria and Romania guaranteed the conditions for the operation of the Romanian Pipeline 1. In 2005, under a new agreement, Bulgargaz was granted exclusive use of that pipeline until the end of 2011. The agreement was extended until 2016.

In 2010, the company Overgas, an operator in the gas supply market in Bulgaria, lodged with the European Commission a complaint against BEH and its two subsidiaries, alleging that they had infringed EU competition rules. After its investigations, the Commission found, by Decision of 17 December 2018 ¹, that those companies' conduct constituted **abuse of a dominant position** on the gas supply market in Bulgaria. The infringement consisted in a refusal to grant third parties, including Overgas, access to the Romanian Transit Pipeline 1, to the gas transmission network and to the gas storage facility in Chiren during the period 30 July 2010 to 1 January 2015. According to the Commission, that prevented Bulgargaz's competitors from developing their offer on Bulgarian territory. Consequently, the Commission imposed a fine of approximately €77 million on the companies concerned.

Following that decision, BEH and its subsidiaries brought proceedings before the General Court of the European Union, seeking the annulment of that decision or, failing that, a reduction in the amount of the fine.

By its judgment, **the General Court annuls the Commission Decision.**

According to the General Court, the Romanian Pipeline 1 was an essential facility for the transportation of Russian gas to Bulgaria due to the lack of any alternative. Even though Bulgargaz was not the owner of that pipeline, Bulgargaz had exclusive use of it, which took the form of a situation of control and, consequently, of Bulgargaz having a **dominant position** on the market in question.

The General Court nevertheless found that the Commission had not demonstrated that Bulgargaz's conduct regarding access to the Romanian Pipeline 1 was the cause of the difficulties which third parties encountered when

requesting access to that pipeline for the transportation of gas from Russia to Bulgaria. Thus, any irregularity that might, in theory, have been committed by Bulgartransgaz in relation to the gas transmission network and the Chiren storage facility could not constitute an infringement of EU competition rules because no company could have entered the Bulgarian gas market without access to the Romanian Pipeline 1.

The General Court also finds that the Commission did not put the BEH Group in a position to argue its position fully as regards the infringement alleged against it and thus infringed its rights of defence.

In those circumstances, the General Court finds that the Commission has not duly established that the BEH Group abused its dominant position on the gas supply market in Bulgaria.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The [full text and, as the case may be, the abstract of the judgment](#) are published on the CURIA website on the day of delivery.

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¹ Commission Decision C(2018) 8806 final of 17 December 2018 relating to proceedings under Article 102 TFEU (Case AT.39849 - BEH Gas). See also Commission Press Release [IP/18/6846](#).